

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
BYRON J. SMITH,)
d.b.a. Thayer Apartments,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 322

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before two members of the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, Washington, at 9:30 a.m., October 4, 1973.

Appellant appeared pro se; respondent appeared through its counsel, Keith D. McGoffin. Shirley W. Marshall, Seattle court reporter,

1 recorded the proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted.
3 Arguments were made.

4 From testimony heard, exhibits examined and arguments considered,
5 the Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 At about 9:40 a.m. on March 15, 1973, from the boiler stack of the
9 Thayer Apartments, 414 E. Pine Street, Seattle, King County, there was
10 emitted for at least seven consecutive minutes black smoke in shade
11 of No. 5 on the Ringelmann Chart.

12 II.

13 Section 9.03 of respondent's Regulation I makes it unlawful to
14 cause or allow an air contaminant emission for more than three minutes
15 in any one hour of a shade darker than No. 2 on the Ringelmann Chart.

16 III.

17 An inspector on respondent's staff, after observing the above-
18 described emission, issued Notice of Violation No. 7656 to appellant.
19 Subsequently and in connection therewith, appellant was served with
20 Notice of Civil Penalty No. 751 in the amount of \$50.00, being one-fifth
21 of the maximum amount which respondent may invoke for a violation of its
22 Regulation I. That penalty is the subject of this appeal.

23 IV.

24 Immediately upon being notified of the alleged violation, appellant
25 stopped the operation of the boiler furnace and summoned a repairman
26 who corrected the mechanical maladjustment which had caused the emission.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 V.

2 Notice of Violation No. 7656 is the first one cited against
3 appellant who had operated apartment houses and hotels in Seattle for
4 several years.

5 From these Findings, the Pollution Control Hearings Board comes to
6 these

7 CONCLUSIONS

8 I.

9 Appellant was in violation of respondent's Regulation I as cited
10 in Notice of Violation No. 7656.

11 II.

12 Notice of Civil Penalty No. 751 is reasonable and lenient, but in
13 view of appellant's good prior record and his prompt efforts to correct
14 the error, further clemency is indicated.

15 Therefore, the Pollution Control Hearings Board issues this

16 ORDER

17 The appeal is denied, but appellant is directed to pay respondent
18 \$25.00, the balance of \$25.00 being suspended on condition of no more
19 similar violations for a period of six months from the date this Order
20 becomes final.

21 DONE at Lacey, Washington this 9th day of October, 1973.

22 POLLUTION CONTROL HEARINGS BOARD

23 Walt Woodward
24 WALT WOODWARD, Chairman

5 Mary Ellen McCaffrey
MARY ELEN McCAFFREY Member

26 W. A. Gissberg, the other member of this Board, did not participate
27 in these proceedings.

FINDINGS OF FACT,
CONCLUSIONS AND ORDER